

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL WAYNE YOST,

Defendant.

Case No. 2:07-cr-00145-KJD-PAL

**ORDER**

(M/Quash - Dkt. #663)

Before the court is the Nevada Department of Corrections' Motion to Quash Subpoena *Duces Tecum* (Dkt. #663). No response to the motion has been filed, and the time for filing a response has now run. Pursuant to LCR 47-9, "[t]he failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion." Moreover, for the same reasons the court addressed at length in a written Order (Dkt. #683) granting a prior motion to quash, the subpoena *duces tecum* issued by counsel for Yost in this case does not comply with the requirements of Rule 17 of the Federal Rules of Criminal Procedure. Rule 17 is not a discovery device. Leave of court is required to obtain pretrial production of documents pursuant to a subpoena *duces tecum*, and counsel must show that the documents requested are relevant to the offenses charged and contain admissible evidence regarding the offenses charged.

Finally, Rule 17(c)(1) does not authorize persons to issue a subpoena *duces tecum* to require production of documents at some time or place other than a hearing or trial before the court.

Accordingly,

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**IT IS ORDERED** the Motion to Quash Subpoena *Duces Tecum* (Dkt. #663) is GRANTED.

Dated this 18th day of May, 2009.

  
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PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE